Supreme Court, U.S.
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No. 93-1248

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

ANNABELLE WINTERS d/b/a
SHARP'S PAWN SHOP,

Petitioner,

v.

BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, OKLAHOMA, OSAGE COUNTY SHERIFF'S DEPARTMENT, GEORGE WAYMAN, Individually and as Sheriff of Osage County, ALLEN LANDSDOWN, Individually and as Deputy Sheriff, DALE PENNY, Individually and as Deputy Sheriff,

Respondents and
Cross-Petitioners.

RESPONDENTS' OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

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RESPONDENTS' OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

The Respondents Board of County Commissioners of Osage County, Osage County Sheriff's Office, George Wayman, Allen Landsdown and Dale Penny file this brief in opposition to the Petitioner's Petition for a Writ of Certiorari. The Respondents Landsdown and Penny are also filing, contemporaneously with this

Opposition, a Cross-Petition pursuant to S. Ct. R. 12.3.

STATEMENT OF THE CASE

On November 9, 1988, a ring was stolen from its owner, George Ward, by his niece, Shelly Dean. The Respondent and Cross-Petitioner Dale Penny, a deputy with the Osage County Sheriff's Office, investigated the theft of the ring, and on December 8, 1988, Penny signed and filed a probable cause affidavit. This caused felony criminal charges to be filed against Shelly Dean, and an arrest warrant to be issued for her arrest in State of Oklahoma v. Shelly Dean, CRF-88-191.

On March 1, 1989, the Respondent and Cross-Petitioner Allen Landsdown, a deputy with the Osage County Sheriff's Office, went to Winters's pawnshop (which is knows as Sharp's Pawnshop) to check on property with regard to an unrelated burglary. Under an Oklahoma statute, Okla. Stat. tit.

59, § 1508(A), Landsdown was entitled to inspect all pawned goods on the premises of a licensed pawnshop. While Landsdown was at the pawnshop, Deputy Penny called and told Landsdown that the ring stolen by Shelly Dean was on the premises of the pawnshop.

Acting on instructions from the Petitioner Penny, who, as noted previously, had signed the probable cause affidavit with regard to the ring, the Petitioner Landsdown seized the ring from Winters's pawnshop. The ring was subsequently used as evidence in criminal proceedings in State v. Shelly Dean, CRF-88-191.

On April 14, 1989, a preliminary hearing was held in State of Oklahoma v. Shelly Dean, CRF-88-191. At that hearing, George Ward identified the ring as his.

On August 28, 1989, the thief, Shelly Dean, entered a plea of no contest to the charges in CRF-88-191. During that hearing

she was ordered to pay $60.00 in restitution, which was the amount of the pawn transaction when she pawned the ring at Sharp's Pawnshop on November 9, 1988.

On September 15, 1989, a check in the amount of $60.00 from the Osage County District Attorney's Victim Restitution Fund was issued to Winters as restitution ordered by the court pursuant to the plea of no contest by Shelly Dean. This restitution check was sent to Winters pursuant to the provisions of Okla. Stat. tit. 22, § 991a-3. This check covered the amount paid by Winters's employee to Shelly Dean when she pawned the ring. Winters has refused to cash the check, and it is in the possession of Winters's attorney.

On September 28, 1989, after Shelly Dean's plea, and after the restitution check had been sent to Winters, the ring was returned to its rightful owner, George

Ward. It is uncontroverted that Winters is not the owner of the ring.

Winters filed this lawsuit pursuant to 42 U.S.C. § 1983,[1] alleging that the seizure and return of a ring by law enforcement officers violated her rights under the United States Constitution. The Petitioner also contended that an Oklahoma statute which required pawnbrokers to disclosure information concerning transactions with their customers, violated the Equal Protection Clause because banks were not required to do so because of federal privacy statutes. The Cross-Petitioners Landsdown and Penny, the two deputies with the Osage County Sheriff's Office, and the Board of Commissioners of Osage County ("County") filed a motion for summary judgment, and Winters filed a response and cross motion for summary judgment.

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[1]This is the basis of federal jurisdiction. S. Ct. R. 12.1(i).

On May 15, 1991, Magistrate Judge John Leo Wagner issued a Report and Recommendation of U.S. Magistrate Judge, in which he granted all Defendants' motion for summary judgment, and denied Winters' motion for summary judgment. Winters objected to the report of the magistrate judge.

On February 13, 1992, the Honorable James O. Ellison affirmed the magistrate judge's report in all respects.

Winters then appealed the granting of summary judgment to the United States Court of Appeals for the Tenth Circuit. On September 2, 1993, the Court of Appeals reversed the district court's opinion in part. Winters v. Board of County Commissioners, 4 F.3d 848 (10th Cir. 1993). The court reiterated its previous holding that the pawnshop was a closely regulated industry in Oklahoma because of state statutes regarding inspections. Id. at

852; S & S Pawnshop v. City of Del City, 847 F.2d 432, 436-37 (10th Cir. 1991). The court also held that because of Okla. Stat. tit. 59, § 1508, the officer was entitled to examine the stolen ring. Winters, 4 F.3d at 854. However, because Landsdown and Penny knew that the stolen ring was on the premises, the court held that seizure of the ring violated the pawnbroker's rights. Id. at 853-55. The court stated:

> If we were to allow an officer under the guise of the administrative statute to seize evidence of criminal activity without a warrant when the officer has a particularized suspicion regarding that evidence, we would eradicate the Fourth Amendment protections enjoyed by the pawnshop.

4 F.3d at 854.

The court also held that had exigent circumstances existed, the stolen ring could have been seized without a search

warrant, but the mere fact that the owner of the ring had announced that he was coming to get the ring was not sufficient to justify the seizure without a warrant. Id. at 854 n.7.

The Petitioner also claimed that the mandatory disclosure of information by pawnbrokers, which is required by Okla. Stat. tit. 12, § 1515(A), violated the Equal Protection Clause of the Fourteenth Amendment. This was rejected by the Tenth Circuit, which held that there was a rational basis for the distinction between the laws governing pawnshops and other financial institutions. Id. at 852-53.

Winters filed a petition for rehearing, which was denied on October 5, 1993.

Winters filed the present Petition for a Writ of Certiorari on December 8, 1993, but the clerk required that a corrected Petition be filed. This was done, and the

Respondent received it on January 27, 1994.

The Respondents Landsdown and Penny are filing, pursuant to S. Ct. R. 12.3, a Cross-Petition to this Petition.

REASONS WHY THE PETITION SHOULD BE DENIED

THE PORTION OF THE OKLAHOMA PAWNBROKER ACT, OKLA. STAT. TIT. 12, § 1515(A), WHICH REQUIRES PAWNBROKERS TO PROVIDE TO LOCAL LAW ENFORCEMENT AGENCIES INFORMATION CONCERNING THE PAWN TRANSACTION DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, DESPITE THE FACT THAT BANKS ARE PROHIBITED FROM DISCLOSURE OF THIS INFORMATION BY FEDERAL STATUTES.

Winters contends that the reporting provisions of the Oklahoma Pawnshop Act, Okla. Stat. tit. 59, § 1515(A), which requires a pawnbroker to provide local law enforcement agencies with certain information about sellers of property to her within three days of any transaction, are violative of the Equal Protection Clause of the Fourteenth Amendment. Winters contends that because a pawnshop is not within the definition of a financial institution, and that the mandatory

disclosures of pawnshop transactions of customers are therefore required by Okla. Stat. tit. 59, § 1515(A) this violates the rights of the pawnshops and their customers under the Equal Protection Clause.

It is argued that this constitutional violation occurs because the pawn customers are not protected by the provisions of either 5 U.S.C. § 552a or 12 U.S.C. §§ 3401-3422, regarding the disclosure of financial information. More specifically, Winters seems to be alleging that Okla. Stat. tit. 59, § 1515 requires her, as a pawnbroker, to divulge financial information about her customers which she is forbidden to disclose pursuant to either 5 U.S.C. § 552a or 12 U.S.C. §§ 3401-3422.

Title 5 U.S.C. § 552a governs the responsibilities of federal agencies in the disclosure of, access to, and content of government records concerning individuals. See Thomas v. United States Department of

Energy, 719 F.2d 342, 345-46 (10th Cir. 1983) ("Congress passed the Act 'to protect the privacy of individuals identified in information systems maintained by Federal agencies'...." (citing congressional findings and statement of purpose quoted in 1974 U.S. Code Cong. & Ad. News 2177-78)); Miller v. United States, 630 F. Supp. 347, 348 (E.D. N.Y. 1986) ("The purpose of this act is to give individuals greater control over the gathering, dissemination, and accuracy of agency information about themselves); and Ely v. Department of Justice, 610 F. Supp. 942, 945 (D.C. Ill. 1985) ("The Privacy Act of 1974 serves to safeguard the public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store and disseminate personal information about many individuals.").

In the present case, the Tenth Circuit correctly noted that 5 U.S.C. § 552a(b) states that this Act applies only to information originating from federal agencies. Winters v. Board of County Commissioners, 4 F.3d 848, 852 (10th Cir. 1993).

The Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422, seeks to protect the customers of financial institutions from unwarranted intrusion into their records by agencies of the federal government. See In re Grand Jury Proceedings, 636 F.2d 81, 84 (5th Cir. 1981). But the definitions portion of the Act, 12 U.S.C. § 3401(1), reveals that pawnbrokers are not covered by it. According to 12 U.S.C. § 3401(1), a financial institution means a bank, savings bank, industrial loan company, trust company, savings association, building and loan or homestead association, credit union or consumer finance institution located in

the United States. This provision does not mention pawnbrokers.

Given the foregoing, it is clear that neither 5 U.S.C. § 552a, nor the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422, are applicable to the disclosure of information by pawnbrokers. Pawnbrokers are not financial institutions within the meaning of this Act, but even if they were, the Act only bars disclosures to federal agencies not disclosures to local law enforcement authorities pursuant to state law.

That the Oklahoma statute, Okla. Stat. tit. 59, § 1515(A), requires disclosure of information that would be prohibited from disclosure if the two federal statutes above-mentioned applied to pawnbrokers, does not mean that the Equal Protection Clause Protection Clause of the Fourteenth Amendment has been violated. See Gregory v. Ashcroft, ___ U.S. ___, 111 S. Ct. 2395,

2406 (1991) (mandatory retirement for state court judges does not violate equal protection); and Vance v. Bradley, 440 U.S. 93, 97 (1979) (foreign service retirement system does not violate equal protection). In Winters, 4 F.3d at 853, the Tenth Circuit noted that equal protection analysis by federal court grants considerable latitude to the states to deal with practical problems of local government, and there is no constitutional infirmity merely because the classification is not made with mathematical nicety. See also Danbridge v. Williams, 397 U.S. 471, 485 (1970) (maximum grant regulation with regard to total amount a family unit could receive did not violate Equal Protection Clause).

In the present case, the Tenth Circuit noted that there was a rational basis for the distinction between the activity of banks and pawnshops, stating that "the

regulation of pawnshops is a substantial government interest as they provide for a market for stolen property." Winters, 4 F.3d at 853. Surely this is the case, particularly since this Court has recognized that a junkyard is a closely regulated industry for the purposes of warrantless administrative searches. See New York v. Burger, 482 U.S. 691 (1987).

Therefore, it is clear that there is a rational basis for requiring that pawnshops disclose information concerning financial transactions with their customers, but not banks. See City of Dallas v. Stanglin, 490 U.S. 19, 25-28 (1989) (ordinance restricting admission to certain dance halls to persons between the ages of fourteen and eighteen had a rational basis, and did not violate the Equal Protection Clause).

CONCLUSION

For the reasons stated, the Respondents respectfully request that the Court deny the Petitioner's Petition for a Writ of Certiorari. If certiorari is granted, the Respondents Landsdown and Penny request that their Cross-Petition also be granted.

Respectfully submitted,

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